

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WISTRON CORPORATION, a Taiwan corporation,

**Plaintiff,**

V.

SAMSUNG ELECTRONICS CO., LTD., a Republic of Korea corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, a Delaware limited liability company,

### Defendants.

CASE No. C08-1373-MJP

**DEFENDANTS' ANSWER TO FIRST  
AMENDED COMPLAINT AND  
COUNTERCLAIMS**

## JURY DEMAND

SAMSUNG ELECTRONICS CO., LTD., a Republic of Korea corporation; SAMSUNG ELECTRONICS AMERICA, INC., a New York corporation; and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC a Delaware limited liability company.

#### **Counterclaimants,**

V.

**WISTRON CORPORATION, a Taiwan corporation,**

Counterclaim-defendant.

1 Defendants Samsung Electronics Co., Ltd. (“SEC”), Samsung Electronics America, Inc.  
 2 (“SEA”) and Samsung Telecommunications America, LLC (“STA”) (collectively,  
 3 “Defendants”), respond to the First Amended Complaint (the “Complaint”) filed by Wistron  
 4 Corporation (“Wistron”) as follows:

5 **PARTIES**

6 1. Defendants are without knowledge or information sufficient to form a belief as  
 7 to the truth of the allegations set forth in paragraph 1 of the Complaint, and therefore deny the  
 8 same.

9 2. Defendants admit that SEC is a corporation organized under the laws of the  
 10 Republic of Korea that had a principal place of business at 250, 2-ga, Taepyong-ro, Jung-gu,  
 11 Seoul, 100-742, South Korea. Defendants admit that SEC manufactures and sells electronic  
 12 products, including cell phones, video playback equipment such as VCRs and DVD players, set  
 13 top boxes and computers. Except as so admitted, Defendants deny the allegations contained in  
 14 paragraph 2 of the Complaint.

15 3. Defendants admit that SEA is a corporation organized under the laws of the state  
 16 of New York with its principal place of business at 105 Challenger Road, Ridgefield Park,  
 17 NJ 07660. Defendants admit that SEA was founded in 1977 as a subsidiary of SEC, and that  
 18 SEA markets and sells consumer electronic products, including video playback equipment, TVs  
 19 and set top boxes. Except as so admitted, Defendants deny the allegations contained in  
 20 paragraph 3 of the Complaint.

21 4. Defendants admit that STA is a limited liability company organized under the  
 22 laws of the state of Delaware with its principal place of business at 1301 East Lookout Drive,  
 23 Richardson, Texas 75091. Defendants admit that STA was established in 1996, and that STA  
 24 markets and sells communication devices in the United States, including cell phones. Except as  
 25 so admitted, Defendants deny the allegations contained in paragraph 4 of the Complaint.

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## JURISDICTION

5. Defendants admit that this is an action for patent infringement and that subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338.

6. Defendants admit that they conduct business within the State of Washington and within this judicial district, but deny the remaining allegations contained in paragraph 6 of the Complaint.

## VENUE

7. Defendants admit that venue in this judicial district is proper under the provisions of 28 U.S.C. §§ 1391(b) and (c) and 1400 (b), but deny the remaining allegations contained in paragraph 7 of the Complaint.

## **FACTUAL BACKGROUND**

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint, and therefore deny the same.

a. Defendants admit that a copy of what purports to be United States Patent No. 5,410,713 ("the '713 Patent") is attached as Exhibit 1 to Wistron's Complaint, and that this copy, on its face, is titled "Power Management System For a Computer," and identifies specified persons as inventors and includes an issuance date of April 25, 1995. Except as so admitted, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8(a) of the Complaint, and therefore deny the same.

b. Defendants admit that a copy of what purports to be United States Patent No. 5,870,613 ("the '613 Patent") is attached as Exhibit 2 to Wistron's Complaint, and that this copy, on its face, is titled "Power Management System For a Computer," and identifies specified persons as inventors and includes an issuance date of February 9, 1999. Except as so admitted, Defendants are without knowledge or information sufficient to form a belief as to the

1 truth of the remaining allegations contained in paragraph 8(b) of the Complaint, and therefore  
 2 deny the same.

3           c. Defendants admit that a copy of what purports to be United States Patent  
 4 No. 5,903,765 (“the ’765 Patent”) is attached as Exhibit 3 to Wistron’s Complaint, and that this  
 5 copy, on its face, is titled “Power Management System For a Computer,” identifies specified  
 6 persons as inventors and includes an issuance date of May 11, 1999. Except as so admitted,  
 7 Defendants are without knowledge or information sufficient to form a belief as to the truth of  
 8 the remaining allegations contained in paragraph 8(c) of the Complaint, and therefore deny the  
 9 same.

10           9. Defendants are without knowledge or information sufficient to form a belief as  
 11 to the truth of the allegations set forth in paragraph 9 of the Complaint, and therefore deny the  
 12 same.

13           a. Defendants admit that a copy of what purports to be United States Patent  
 14 No. 5,450,079 (the “’079 Patent”) is attached as Exhibit 4 to Wistron’s Complaint, and that this  
 15 copy, on its face, identifies a specified person as the inventor and includes an issuance date of  
 16 September 12, 1995. Defendants deny that the ’079 Patent is titled “Multimodal Remote  
 17 Control Device Having Electronically Alterable Keypad Designations” as alleged in the First  
 18 Amended Complaint because Exhibit 4, on its face, is titled “Multimodal Remote Control  
 19 Device Having Electrically Alterable Keypad Designations.” Except as admitted, Defendants  
 20 are without knowledge or information sufficient to form a belief as to the truth of the remaining  
 21 allegations contained in paragraph 9(a) of the Complaint, and therefore deny the same.

22           10. Defendants deny the allegations contained in paragraph 10 of the Complaint.

23           11. SEC denies the allegations contained in paragraph 11 of the Complaint. SEA  
 24 and STA are without knowledge or information sufficient to form a belief as to the truth of the  
 25 allegations set forth in paragraph 11 of the Complaint, and therefore deny the same.

26           12. Defendants deny the allegations contained in paragraph 12 of the Complaint.

- 1                   a. Defendants deny the allegations contained in paragraph 12(a) of the  
2 Complaint.  
3                   i. Defendants deny the allegations contained in paragraph 12(a)(i)  
4 of the Complaint.  
5                   ii. Defendants deny the allegations contained in paragraph 12(a)(ii)  
6 of the Complaint.  
7                   iii. Defendants deny the allegations contained in paragraph 12(a)(iii)  
8 of the Complaint.  
9                   b. Defendants deny the allegations contained in paragraph 12(b) of the  
10 Complaint.

11                 13. Defendants admit that the Complaint refers to certain products as the "Wistron  
12 A Accused Products." Except as so admitted, Defendants deny any remaining allegations  
13 contained in paragraph 13 of the Complaint.

- 14                 14. Defendants deny the allegations contained in paragraph 14 of the Complaint.  
15                   a. Defendants deny the allegations contained in paragraph 14(a) of the  
16 Complaint.  
17                   i. Defendants deny the allegations contained in paragraph 14(a)(i)  
18 of the Complaint.

19                 15. Defendants admit the Complaint refers to certain products as the "Wistron B  
20 Accused Products." Except as so admitted, Defendants deny any remaining allegations  
21 contained in paragraph 15 of the Complaint.

22                 16. Defendants deny the allegations contained in paragraph 16 of the Complaint.

23                   **FIRST CLAIM FOR RELIEF**

24                   **Infringement of U.S. Patent No. 5,410,713**

25                 17. Defendants incorporate their answers to paragraphs 1-16 as if fully set forth  
26 herein.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint.
19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

## **SECOND CLAIM FOR RELIEF**

## **Infringement of U.S. Patent No. 5,870,613**

20. Defendants incorporate their answers to paragraphs 1-19 as if fully set forth herein.

21. Defendants deny the allegations contained in paragraph 21 of the Complaint.
22. Defendants deny the allegations contained in paragraph 22 of the Complaint.

### **THIRD CLAIM FOR RELIEF**

## Infringement of U.S. Patent No. 5,903,765

23. Defendants incorporate their answers to paragraphs 1-22 as if fully set forth herein.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint.
25. Defendants deny the allegations contained in paragraph 25 of the Complaint.

## **FOURTH CLAIM FOR RELIEF**

## **Infringement of U.S. Patent No. 5,450,079**

26. Defendants incorporate their answers to paragraphs 1-25 as if fully set forth herein.

27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint.

## FIFTH CLAIM FOR RELIEF

## Willful Infringement

29. Defendants incorporate their answers to paragraphs 1-28 as if fully set forth herein

30. Defendants deny the allegations contained in paragraph 30 of the Complaint.
31. Defendants deny the allegations contained in paragraph 31 of the Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Complaint.
33. Defendants deny the allegations contained in paragraph 33 of the Complaint.

## **GENERAL DENIAL**

34. Defendants deny any allegation in the Complaint not specifically admitted in Defendants' responsive pleading above.

## **PRAYER FOR RELIEF**

35. Defendants deny that Wistron is entitled to any of the relief sought in the Prayer For Relief or any relief whatsoever.

## **AFFIRMATIVE DEFENSES**

36. Defendants assert the following affirmative and other defenses to Wistron's Complaint and reserve the right to amend their Answer to assert other affirmative defenses as additional information becomes available.

### **First Defense: Noninfringement**

37. Defendants have not infringed and do not infringe, whether directly, contributorily, or by inducement, any claim of the ’765 Patent, the ’613 Patent, the ’713 Patent, or the ’079 Patent (collectively and individually, the “Wistron Asserted Patents”), either literally or under the doctrine of equivalents, whether willfully or otherwise.

### **Second Defense: Invalidity**

38. The Wistron Asserted Patents are invalid for failure to meet one or more of the conditions of patentability specified in 35 U.S.C. §§ 101 *et seq.*, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, 112, 132, and/or under the doctrine of obviousness-type double patenting.

### **Third Defense: License, Implied License and/or Patent Exhaustion**

39. Wistron's claims for relief are barred in whole or in part pursuant to the doctrines of express license, patent exhaustion and/or implied license.

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#### **Fourth Defense: Prosecution History Estoppel**

40. Wistron is precluded under the doctrine of prosecution history estoppel from asserting any construction of any of the claims of the Wistron Asserted Patents to cover any product manufactured, used, imported, sold, or offered for sale by any of the Defendants.

### **Fifth Defense: Laches, Waiver, and Estoppel**

41. The Wistron Asserted Patents are unenforceable under the doctrines of laches, waiver, and/or estoppel.

### **Sixth Defense: Failure to Mark/Limitation on Damages**

42. Upon information and belief, Wistron has not marked any devices that embody any of the purported claims of the Wistron Asserted Patents with proper notice of such patents, as required by 35 U.S.C. § 287, such that Wistron is not entitled to any pre-filing damages pursuant to that provision. Wistron is barred under 35 U.S.C. § 287 from recovering any damages for any alleged infringement of the Wistron Asserted Patents that occurred prior to the filing of Wistron’s Complaint for Patent Infringement, or for which Wistron has not provided Defendants proper notice of its infringement allegations.

### **Seventh Defense: Unclean Hands**

43. Wistron is barred under the doctrine of unclean hands from obtaining any relief or recovery against Defendants.

### **Eighth Defense: Limitation on Damages**

44. Wistron's recovery for alleged infringement of any of the Wistron Asserted Patents, if any, is limited pursuant to 35 U.S.C. § 286.

### **Ninth Defense: Limitation on Remedies**

45. Wistron's claims for monetary relief are limited to, if anything, a reasonable and non-discriminatory royalty. Some or all of Wistron's claims are not entitled to injunctive relief.

## **Tenth Defense: 28 U.S.C. § 1498(a)**

46. Wistron's remedies are limited by 28 U.S.C. § 1498(a).

### **Eleventh Defense: Lack of Standing**

47. Some or all of Wistron's claims are barred because Wistron lacks standing to assert such claims.

## **Twelfth Defense: Joinder**

48. Some or all of Wistron's claims are barred because Wistron failed to join all necessary and/or indispensable parties.

## **Thirteenth Defense: Reservation of Additional Defenses**

8       49. Defendants reserve all affirmative defenses under Rule 8(c) of the Federal Rules  
9 of Civil Procedure, the Patent Laws of the United States and any other defenses, at law or in  
10 equity, that may now or in the future be available based on discovery or any other factual  
11 investigation concerning this case or any related action.

## **DEFENDANTS' COUNTERCLAIMS**

## JURISDICTION

14       50. This is, in part, a declaratory relief action pursuant to 28 U.S.C. §§ 2201 and  
15 2202 to resolve an actual controversy between Counterclaimants Samsung Electronics Co., Ltd.  
16 (“SEC”), Samsung Electronics America, Inc. (“SEA”) and Samsung Telecommunications  
17 America, LLC (“STA”) (collectively, “Defendants”) and Counterclaim-defendant Wistron  
18 Corporation (“Wistron”).

19        51. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1338, and pursuant to the  
20 patent laws of the United States of America, 35 U.S.C. § 100, *et seq.*

## VENUE

22       52.     Venue properly lies within the Western District of Washington pursuant to the  
23 provisions of 28 U.S.C. §§ 1391 (b), (c), (d) and/or 1400(b).

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25	
26	

## THE PARTIES

53. SEC is a corporation organized under the laws of the Republic of Korea with its principal place of business at Samsung Electronics Building, 1320-10 Seocho 2-dong , Seocho-gu, Seoul 137-857, Korea.

54. SEA is a corporation organized under the laws of the state of New York with its principal place of business at 105 Challenger Road, Ridgefield Park, NJ 07660.

55. STA is a limited liability company organized under the laws of the state of Delaware with its principal place of business at 1301 East Lookout Drive, Richardson, Texas 75091.

56. On information and belief, Wistron is a corporation organized and existing under the laws of Taiwan with a principal place of business at Hsichih, Taiwan, R.O.C.

## **FACTUAL ALLEGATIONS**

57. On or about September 12, 2008, Wistron filed its initial Complaint in this judicial district against Defendants alleging infringement of U.S. Patent No. 5,410,713 ("the '713 Patent"). The '713 Patent is titled "Power Management System For a Computer." Defendants deny infringement, either literally or under the doctrine of equivalents, and assert that the '713 Patent is invalid.

58. On or about September 12, 2008, Wistron filed its initial Complaint in this judicial district against Defendants alleging infringement of U.S. Patent No. 5,870,613 ("the '613 Patent"). The '613 Patent is titled "Power Management System For a Computer." Defendants deny infringement, either literally or under the doctrine of equivalents, and assert that the '613 Patent is invalid.

59. On or about September 12, 2008, Wistron filed its initial Complaint in this judicial district against Defendants alleging infringement of U.S. Patent No. 5,903,765 ("the '765 Patent"). The '765 Patent is titled "Power Management System For a Computer."

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1 Defendants deny infringement, either literally or under the doctrine of equivalents, and assert  
2 that the '765 Patent is invalid.

3       60. On or about October 1, 2008, Wistron filed its First Amended Complaint in this  
4 judicial district against Defendants alleging infringement of U.S. Patent No. 5,450,079 (“the  
5 ’079 Patent”). The ’079 Patent is titled “Multimodal Remote Control Device Having  
6 Electrically Alterable Keypad Designations.” Defendants deny infringement, either literally or  
7 under the doctrine of equivalents, and assert that the ’079 Patent is invalid.

8           61. A judicial declaration is necessary and appropriate at this time to allow  
9 Defendants to ascertain their rights and duties with respect to the conduct of their affairs, which  
10 Wistron has alleged infringe the '713 Patent, the '613 Patent, the '765 Patent, and the '079  
11 Patent, and to establish that those patents are invalid.

## FIRST COUNTERCLAIM

**(Declaration of Noninfringement – '713 Patent)**

62. Defendants incorporate by reference paragraphs 1-61 as if fully set forth herein.

15       63.     Wistron has sued Defendants in the present action, alleging infringement of the  
16 '713 Patent. Thus, an immediate, real, and justiciable controversy exists between Defendants  
17 and Wistron with respect to the alleged infringement of the '713 Patent.

18        64. Defendants have not infringed, are not now infringing, and have not threatened  
19 to infringe, willfully or otherwise, the '713 Patent.

20        65. Defendants have not contributed to the infringement, and are not now  
21 contributing to the infringement, of the '713 Patent.

22        66. Defendants have not induced others to infringe, and are not now inducing others  
23 to infringe, the '713 Patent.

24        67. Defendants request declaratory judgment that Defendants do not infringe,  
25 directly or indirectly, any claim of the '713 Patent.

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## **SECOND COUNTERCLAIM**

**(Declaration of Noninfringement – '613 Patent)**

68. Defendants incorporate by reference paragraphs 1-67 as if fully set forth herein.

69. Wistron has sued Defendants in the present action, alleging infringement of the '613 Patent. Thus, an immediate, real, and justiciable controversy exists between Defendants and Wistron with respect to the alleged infringement of the '613 Patent.

70. Defendants have not infringed, are not now infringing, and have not threatened to infringe, willfully or otherwise, the '613 Patent.

71. Defendants have not contributed to the infringement, and are not now contributing to the infringement, of the '613 Patent.

72. Defendants have not induced others to infringe, and are not now inducing others to infringe, the '613 Patent.

73. Defendants request declaratory judgment that Defendants do not infringe, directly or indirectly, any claim of the '613 Patent.

## **THIRD COUNTERCLAIM**

**(Declaration of Noninfringement – '765 Patent)**

74. Defendants incorporate by reference paragraphs 1-73 as if fully set forth herein.

75. Wistron has sued Defendants in the present action, alleging infringement of the '765 Patent. Thus, an immediate, real, and justiciable controversy exists between Defendants and Wistron with respect to the alleged infringement of the '765 Patent.

76. Defendants have not infringed, are not now infringing, and have not threatened to infringe, willfully or otherwise, the '765 Patent.

77. Defendants have not contributed to the infringement, and are not now contributing to the infringement, of the '765 Patent.

78. Defendants have not induced others to infringe, and are not now inducing others to infringe, the '765 Patent.

1        79. Defendants request declaratory judgment that Defendants do not infringe,  
2 directly or indirectly, any claim of the '765 Patent.

## **FOURTH COUNTERCLAIM**

**(Declaration of Noninfringement – '079 Patent)**

5 80. Defendants incorporate by reference paragraphs 1-79 as if fully set forth herein.

6        81.      Wistron has sued Defendants in the present action, alleging infringement of the  
7 '079 Patent. Thus, an immediate, real, and justiciable controversy exists between Defendants  
8 and Wistron with respect to the alleged infringement of the '079 Patent.

9        82. Defendants have not infringed, are not now infringing, and have not threatened  
10 to infringe, willfully or otherwise, the '079 Patent.

11        83. Defendants have not contributed to the infringement, and are not now  
12 contributing to the infringement, of the '079 Patent.

13        84. Defendants have not induced others to infringe, and are not now inducing others  
14 to infringe, the '079 Patent.

15        85. Defendants request declaratory judgment that Defendants do not infringe,  
16 directly or indirectly, any claim of the '079 Patent.

## **FIFTH COUNTERCLAIM**

## **(Declaration of Invalidity – '713 Patent)**

19 86. Defendants incorporate by reference paragraphs 1-85 as if fully set forth herein.

20        87. An immediate, real, and justiciable controversy exists between Defendants and  
21 Wistron with respect to the invalidity of the '713 Patent.

22        88. The claims of the '713 Patent are invalid under the laws of the United States,  
23 including but not limited to, the provisions of 35 U.S.C. §§ 101, 102, 103, 112, 132, and/or  
24 under the doctrine of obviousness-type double patenting.

25        89. Defendants request declaratory judgment that the claims of the '713 Patent are  
26 invalid.

## SIXTH COUNTERCLAIM

### **(Declaration of Invalidity – '613 Patent)**

90. Defendants incorporate by reference paragraphs 1-89 as if fully set forth herein.

91. An immediate, real, and justiciable controversy exists between Defendants and

Wistron with respect to the invalidity of the '613 Patent.

92. The claims of the '613 Patent are invalid under the laws of the United States, including but not limited to, the provisions of 35 U.S.C. §§ 101, 102, 103, 112, 132, and/or under the doctrine of obviousness-type double patenting.

93. Defendants request declaratory judgment that the claims of the '613 Patent are invalid.

## **SEVENTH COUNTERCLAIM**

### **(Declaration of Invalidity – '765 Patent)**

94. Defendants incorporate by reference paragraphs 1-93 as if fully set forth herein.

95. An immediate, real, and justiciable controversy exists between Defendants and  
n with respect to the invalidity of the '765 Patent.

96. The claims of the '765 Patent are invalid under the laws of the United States, including but not limited to, the provisions of 35 U.S.C. §§ 101, 102, 103, 112, 132, and/or under the doctrine of obviousness-type double patenting.

97. Defendants request declaratory judgment that the claims of the '765 Patent are invalid.

## **(Declaration of Invalidity – '079 Patent)**

98. Defendants incorporate by reference paragraphs 1-97 as if fully set forth herein.

99. An immediate, real, and justiciable controversy exists between Defendants and

Wistron with respect to the invalidity of the '079 Patent.

1        100. The claims of the '079 Patent are invalid under the laws of the United States,  
2 including but not limited to, the provisions of 35 U.S.C. §§ 101, 102, 103, 112, 132, and/or  
3 under the doctrine of obviousness-type double patenting.

4 101. Defendants request declaratory judgment that the claims of the '079 Patent are  
5 invalid.

## **PRAAYER FOR RELIEF**

7 Defendants and Counterclaimants SEC, SEA, and STA respectfully request that the  
8 Court enter judgment in their favor and against Plaintiff and Counterclaim-defendant Wistron,  
9 and that the Court grant Defendants at least the following forms of relief:

- a. That Wistron's Complaint be dismissed with prejudice;
  - b. That declaratory judgment be entered that the claims of the '713 Patent  
ed by Defendants;
  - c. That declaratory judgment be entered that the claims of the '713 Patent
  - d. That declaratory judgment be entered that the claims of the '613 Patent  
ed by Defendants;
  - e. That declaratory judgment be entered that the claims of the '613 Patent
  - f. That declaratory judgment be entered that the claims of the '765 Patent  
ed by Defendants;
  - g. That declaratory judgment be entered that the claims of the '765 Patent
  - h. That declaratory judgment be entered that the claims of the '079 Patent  
ed by Defendants;
  - i. That declaratory judgment be entered that the claims of the '079 Patent



**JURY DEMAND**

Samsung Electronics Co., Ltd., Samsung Electronics America, Inc. and Samsung Telecommunications America, LLC hereby demand a trial by jury on all issues triable of right by a jury.

Dated this 22nd day of January, 2009.

/s/ *Richard T. Mulloy*  
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 Samsung Telecommunications America, LLC

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2009, I electronically filed the foregoing Defendants' Answer to First Amended Complaint and Counterclaims with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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Martha Rodriguez-Lopez  
Christopher Schenck  
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Attorneys for Plaintiff Wistron Corporation

Dated this 22nd day of January, 2009.

s/ Richard T. Mulloy  
Richard T. Mulloy

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